

REMARKS

In the accompanying amendment, claims 30-34 are amended.

Specification

Replacement pages 8-10, 12, and 15 containing Table 1-4, and 6-7 are supplied herewith in response to the Examiner's objection that these tables were not clear in the specification as filed. Accordingly, the Examiner is respectfully requested to withdraw the objection to the specification.

Claim Observations

Applicants thank the Examiner for the keen observation regarding the inconsistent introductory phrase in claims 27-34. In response, the Applicants have amended claims 27-34 to have a consistent introductory phrase.

Claims Objections

The minor informality in claim 29 has been corrected. Accordingly, the Examiner is respectfully requested to withdraw the objection to claim 29.

§103 Rejection of the Claims

Claims 25-50 stand rejected under 35 USC § 103(a) as being unpatentable over Hamilton (EP 0 034 123) in view of Kukes et. al. (US 4, 522, 936). Applicants traverse.

Claim 26 includes the limitation : "mixing an aqueous solution of transition metal anions having a pH of 9 or higher with a carrier". Neither Hamilton nor Kukes disclose the claimed pH range.

Applicants can rebut a *prima facie* case of obviousness based on overlapping ranges by showing the criticality of the claimed range.<sup>1</sup> Moreover, Applicants can rebut a presumption of obviousness based on a claimed invention that falls within a prior art range by showing that there are new and unexpected results relative to the prior art.<sup>2</sup>

<sup>1</sup> *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990)

<sup>2</sup> *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1322, 73 USPQ2d 1225, 1228 (Fed. Cir. 2004)

The criticality of the claimed pH range lies in the surprising finding that the catalysts prepared at a pH above 9 have a high conversion and selectivity towards linear olefin or primary metathesis products of the metathesis of longer olefinic feed streams as is explained in page 2 of the specification and can be seen from Tables 2,4 and 7. The inventors have also surprisingly found that the the claimed pH range further has the advantage of providing the catalyst with uniform distribution of smaller crystallites (Table 3).

The foregoing shows that the claimed pH range is critical and yields unexpected results. This indicates the claim 26 is not obvious. Given that claims 27-35 depend on claim 26, it is respectfully submitted that these claims are also not rendered obvious in view of Hamilton and Kukes.

The remaining claims each includes a limitation of similar scope to the above-described limitation of claim 1. Thus, it is respectfully submitted that these claims are also not obvious in view of Hamilton and Kukes.

Based on the foregoing, the Examiner is respectfully requested to withdraw the rejection of the claims.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (650-903-2257) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 503437

Respectfully submitted,

ALTA SPAMER ET AL.

By their Representatives,

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**AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111**

Serial Number: 10/524,795

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Title: Metathesis Catalyst and Process

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